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Attorneys for Defendant
Supress Products, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SERIOUS MATERIALS, LLC, a Delaware
limited liability company,

Plaintiff,

vs.

SUPRESS PRODUCTS, LLC, a Nevada limited
liability company,

Defendant.

No. **C07 05176**
(Removal From Santa Clara County
Superior Court Case No. 107CV093712)

NOTICE OF REMOVAL

REED SMITH LLP

A limited liability partnership formed in the State of Delaware

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
2 DISTRICT OF CALIFORNIA:

3
4 NOTICE IS HEREBY GIVEN that Defendant Supress Products, LLC ("Supress") hereby
5 removes the above-captioned action from the Superior Court of California, Santa Clara County, to
6 the United States District Court for the Northern District of California. As grounds for removal,
7 Supress states as follows:

8
9 1. On September 6, 2007, Plaintiff Serious Materials, LLC ("Serious Materials") filed a
10 complaint against Supress and Does 1 through 10 in the Santa Clara County Superior Court, which
11 was docketed at Civil Action No. 107CV093712. A copy of the Complaint is attached hereto as
12 Exhibit "A."

13
14 2. Supress was served with the Summons and Complaint on September 11, 2007. A
15 copy of the summons is attached hereto as Exhibit "B."

16
17 3. This action is a civil action of which this Court would have original jurisdiction under
18 28 U.S.C. Section 1331 and/or 28 U.S.C. Section 1338, and which may be removed to this Court
19 pursuant to 28 U.S.C. Section 1441, because it is a civil action arising under the law of the United
20 States and/or it is a civil action arising under an Act of Congress relating to trademarks.
21 Specifically, Serious Materials alleges causes of action for trademark infringement pursuant to 15
22 U.S.C. Section 1114 and trademark infringement and false designation of origin pursuant to 15
23 U.S.C. Section 1125.

24
25 4. The filing of this Notice of Removal is timely under 28 U.S.C. Section 1446 because
26 it was filed less than one year from commencement of this action, and within thirty days after
27 Supress was served with a copy of the Complaint and corresponding summons.
28

1 12. In accordance with 28 U.S.C. Section 1446(d), Supress is filing a copy of this Notice
2 of Removal with the Superior Court of California, Santa Clara County, and is serving a copy upon
3 Serious Materials' counsel.

4
5 13. Intradistrict Assignment: Pursuant to Local Rule 3-2(c), intradistrict assignment is
6 proper to any Division of this Court because this is an action involving intellectual property rights.

7
8 DATED: October 9, 2007.

9 REED SMITH LLP

10
11 By  _____

12 Morgan W. Tovey
13 Jonah D. Mitchell
14 Attorneys for Defendant
15 Supress Products, LLC

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EXHIBIT “A”

John L. Cooper (State Bar No. 050324)
Jeffrey M. Fisher (State Bar No. 155284)
June T. Tai (State Bar No. 226997)
Farella Braun & Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104
Telephone: (415) 954-4400
Facsimile: (415) 954-4480

Attorneys for Plaintiff
SERIOUS MATERIALS, LLC

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

SERIOUS MATERIALS, LLC, a
Delaware limited liability company,

Plaintiff,

vs.

SUPRESS PRODUCTS, LLC, a Nevada
limited liability company; and DOES 1
through 10,

Defendants.

Case No. **107CV093712**

**VERIFIED COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF for:**

- 1) Trademark Infringement Pursuant to 15 U.S.C. § 1114;**
- 2) Trademark Infringement and False Designation of Origin Pursuant to 15 U.S.C. § 1125;**
- 3) Unfair Competition Under California Business & Professions Code § 17200; and**
- 4) Common Law Trademark Infringement**

Plaintiff Serious Materials, LLC ("Serious Materials" or "Plaintiff") alleges as follows:

PARTIES

1. Serious Materials is a Delaware limited liability company with its principal place of business in Sunnyvale, California, authorized to do and doing business in the State of California.
2. Defendant Supress Products, LLC ("Supress") is a Nevada limited liability company with its principal place of business in San Rafael, California, registered to do and doing

1 business in the State of California.

2 3. The true names and capacities, whether individual, corporate, associate or
3 otherwise of Defendants Does 1-10, inclusive, are unknown to Plaintiff at this time. Plaintiff sues
4 such defendants by such fictitious names and prays for leave to amend this Complaint to properly
5 name and charge each such Defendant when all necessary facts have been ascertained.

6 4. Serious Materials is informed and believes, and on that basis alleges, that each of
7 the Defendants in this action performed the acts and omissions alleged in this Complaint as the
8 agent and/or employee of all the other Defendants, and that while committing the acts and
9 omissions alleged in this Complaint, each Defendant was acting within the scope of such agency
10 and/or employment.

11 5. Serious Materials is informed and believes, and on that basis alleges, that each of
12 the Defendants sued herein are responsible in some manner for the occurrences herein alleged,
13 and that Serious Materials' damages, as herein alleged, were proximately and directly caused by
14 such Defendants.

15 **FACTUAL ALLEGATIONS**

16 6. Serious Materials is a leading manufacturer and supplier of high-tech
17 soundproofing products that are engineered to outperform traditional soundproofing techniques.
18 Serious Materials' soundproofing products are marketed, distributed, and sold throughout North
19 America, both to building professionals and to consumers.

20 7. Serious Materials is the owner and registrant of the federally registered trademark
21 QUIETROCK, which Serious Materials uses in connection with the sale, offer for sale,
22 distribution, and advertising of its soundproofing products throughout North America.

23 8. Since at least early 2003, Serious Materials or its predecessors, Quiet Solution,
24 LLC and Quiet Solution, Inc. (together "Quiet Solution"), have been using the QUIETROCK
25 mark in commerce for its soundproofing products. Serious Materials owns the federal
26 registration for the QUIETROCK word mark (United States Trademark Registration No.
27 2,900,787), registered November 2, 2004 in Class 17. A true and correct copy of the Certificate
28 of Registration for QUIETROCK is attached hereto as Exhibit A.

1 9. Under Section 7(c) of the Lanham Act, 15 U.S.C. § 1057(c), Serious Materials'
2 nationwide rights in the QUIETROCK mark relate back to the filing date of the application,
3 which is April 18, 2003.

4 10. Since Quiet Solution first used the QUIETROCK mark in commerce, Quiet
5 Solution, and later its successor-in-interest, Serious Materials, has continuously used and done
6 business with and under the mark. Serious Materials has and continues to give notice that the
7 QUIETROCK mark is registered by displaying the mark with the "®" symbol, in numerous
8 places on its website, on its products, and in its marketing and advertising materials.

9 11. Serious Materials has expended a substantial amount of money and effort in
10 advertising and promoting the QUIETROCK mark in conjunction with its business. Serious
11 Materials' QUIETROCK mark is well known and its products are frequently imitated. Serious
12 Materials' substantial promotional, advertising, publicity, and public relations activities further
13 promote the recognition and goodwill associated with its QUIETROCK mark.

14 12. Serious Materials is informed and believes and on that basis alleges that Supress
15 is, and at all times mentioned herein, has been engaged in the business of selling soundproofing
16 products and solutions, and that Supress sells its products in California and in a number of other
17 states directly, as well as through dealers and wholesalers.

18 13. Serious Materials is informed and believes and on that basis alleges that Supress is
19 owned and operated by Bruce Donaldson, a former employee of Serious Materials.

20 14. As a result of his former employment by Serious Materials, Bruce Donaldson, and
21 by extension, Supress, knew of the use of the term QUIETROCK by Serious Materials to identify
22 its soundproofing products. Nevertheless, Supress has used the QUIETROCK mark in
23 connection with the sale of its products.

24 15. Searches for the term "QUIETROCK" performed on the popular website search
25 engine Google, available at <http://www.google.com>, bring up a "Sponsored Link" which uses
26 Serious Materials' federally registered QUIETROCK trademark. The sponsored link contains the
27 web address of, and a click-through link to, Supress' website, <http://www.supressproducts.com>.
28 The sponsored link is displayed either at the top of the search results page or on the right hand

1 side of the search results page. True and correct copies of sample search results pages are
2 attached as Exhibits B and C.

3 16. Similarly, searches for the term "QUIETROCK" performed on the popular website
4 search engine Ask.com, available at <http://www.ask.com>, bring up a "Sponsored Link" which
5 uses Serious Materials' federally registered QUIETROCK trademark. The sponsored link
6 contains the web address of, and a click-through link to, Supress' website,
7 <http://www.supressproducts.com>. A true and correct copy of a sample search results page is
8 attached as Exhibit D.

9 17. Serious Materials is informed and believes and on that basis alleges that Supress
10 purchased the sponsored link from Google as a means of advertising and promoting its
11 soundproofing products.

12 18. Serious Materials is informed and believes and on that basis alleges that Supress
13 purchased the sponsored link from Ask.com as a means of advertising and promoting its
14 soundproofing products.

15 19. Serious Materials did not authorize or consent to Supress' use of the
16 QUIETROCK mark.

17 20. Supress' unauthorized use of QUIETROCK is identical in sound and appearance.

18 21. Supress' unauthorized use of QUIETROCK is likely to cause substantial confusion
19 and mistake, and is likely to deceive the public and actual and prospective customers of Serious
20 Materials.

21 22. Potential and actual customers searching for Serious Materials' website and
22 products via the Google or Ask.com search engines are likely to encounter search results
23 containing the sponsored links described in Paragraphs 15 and 16 above. Because the sponsored
24 links contain the federally registered mark QUIETROCK, but link through to display the Supress
25 website, those viewing the sponsored links are likely to be misled, confused, or deceived as to the
26 sponsorship and affiliation between Supress and Serious Materials and as to the identity of the
27 company from which QUIETROCK products can be purchased. The likelihood of confusion is
28 even greater given that Supress and Serious Materials compete in the same market for

1 soundproofing products.

2 **FIRST CAUSE OF ACTION**

3 **(Trademark Infringement Pursuant to Lanham Act § 32,**

4 **15 U.S.C. § 1114, against all Defendants)**

5 23. Serious Materials incorporates by reference paragraphs 1 through 22, inclusive, as
6 if fully set forth and alleged herein.

7 24. Serious Materials is the owner of all of the rights in the federally registered
8 QUIETROCK mark.

9 25. Supress is aware of Serious Materials' rights in the QUIETROCK mark.
10 Nevertheless, Supress has used and is using the QUIETROCK mark without Serious Materials'
11 authorization or consent.

12 26. Supress' use of the QUIETROCK mark constitutes a use in commerce as defined
13 in the Lanham Act.

14 27. Said use of QUIETROCK in connection with the advertisement of Supress'
15 soundproofing products, in a manner likely to cause confusion, mistake or deception of the public
16 and of Serious Materials' actual and prospective customers, unlawfully violates and infringes the
17 rights of Serious Materials in its federally registered mark under Lanham Act Section 32, 15
18 U.S.C. § 1114.

19 28. Supress' heretofore alleged acts of trademark infringement and unfair competition
20 have been committed with the intent to cause confusion, mistake and to deceive.

21 29. Supress' use of QUIETROCK is damaging and will continue to damage Serious
22 Materials in an amount to be proved at trial.

23 30. Supress' acts of infringement have caused and will continue to cause Serious
24 Materials to suffer irreparable injury to its business, reputation, and goodwill, for which there is
25 no plain, speedy or adequate remedy at law.

26 31. Supress' acts of infringement were and continue to be willful, deliberate, wanton,
27 and in reckless and conscious disregard of the rights of Serious Materials, thereby supporting an
28 award of trebled, exemplary, and/or punitive damages.

SECOND CAUSE OF ACTION

(Trademark Infringement Pursuant to Lanham Act § 43,

15 U.S.C. § 1125, against all Defendants)

32. Serious Materials incorporates by reference paragraphs 1 through 31, inclusive, as if fully set forth and alleged herein.

33. Supress' conduct in using the QUIETROCK mark to link to the Supress website infringes Serious Materials' registered trademark and suggests an affiliation between Supress and Serious Materials. This conduct is false and misleading.

34. Supress' conduct has caused and will continue to cause injury to Serious Materials in violation of Lanham Act Section 43(a), 15 U.S.C. § 1125(a).

35. Serious Materials has suffered or will suffer damages as a result of Supress' conduct in an amount to be proved at trial.

36. Supress' conduct has caused and will continue to cause Serious Materials to suffer irreparable injury to its business, reputation, and goodwill, for which there is no plain, speedy or adequate remedy at law.

37. Supress' conduct was and continues to be willful, deliberate, wanton, and in reckless and conscious disregard of the rights of Serious Materials, thereby supporting an award of trebled, exemplary, and/or punitive damages.

THIRD CAUSE OF ACTION

(California Business & Professions Code § 17200, *et seq.* against all Defendants)

38. Serious Materials incorporates by reference paragraphs 1 through 37, inclusive, as if fully set forth and alleged herein.

39. Supress' aforesaid activities constitute unfair competition in violation of California Business and Professions Code § 17200, *et seq.* As more fully alleged above, among other things, Supress has infringed and will continue to infringe upon Serious Materials' QUIETROCK mark. By doing so, Supress has confused and will continue to confuse or mislead the public as to the source, origin, or sponsorship of Supress' products and Supress has wrongfully capitalized on Serious Materials' advertising campaign.

40. These wrongful acts have proximately caused and will continue to cause Serious Materials substantial injury, including, but not limited to, loss of profits, confusion of potential customers, injury to its goodwill and reputation, and diminution in value of its protected works and marks, all in violation of federal and state law as identified in this Complaint. Serious Materials has thus suffered injury in fact and has lost money and/or property as a result of Supress' acts of unfair competition.

41. Serious Materials seeks restitution of all economic gains realized by Supress as a result of Supress' unfair competition.

42. Supress' acts of unfair competition, unless enjoined by this Court, will continue to cause Serious Materials to sustain irreparable damage, loss, and injury, for which Serious Materials has no adequate remedy at law.

FOURTH CAUSE OF ACTION

(Common Law Unfair Competition against all Defendants)

43. Serious Materials incorporates by reference paragraphs 1 through 42, inclusive, as if fully set forth and alleged herein.

44. Serious Materials' trademark QUIETROCK is a symbol of extensive goodwill and customer recognition built up through substantial amounts of time, effort, and money in providing quality products to customers.

45. Supress' unlawful activities as alleged herein are likely to cause confusion between Supress and its products, on the one hand, and Serious Materials and its products, on the other. Such activities by Supress infringe the valuable common law trademark and other rights held by Serious Materials.

46. Supress' acts as alleged herein constitute infringement of Serious Materials' QUIETROCK trademark under common law.

47. Supress' acts of trademark infringement have caused Serious Materials to sustain monetary damages, loss, and injury, in an amount to be determined according to proof at trial.

48. Supress' acts of trademark infringement, unless enjoined by this Court, will continue to cause Serious Materials to sustain irreparable damage, loss, and injury, for which

Serious Materials has no plain, speedy, or adequate remedy at law.

49. Supress' acts of infringement were and continue to be willful, deliberate, wanton, and in reckless and conscious disregard of the rights of Serious Materials, thereby supporting an award of trebled, exemplary, and/or punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Serious Materials respectfully requests that this Court:

1. Enter judgment against Defendants on all of Serious Materials' causes of action;
2. Order temporary, preliminary, and permanent injunctive relief to restrain and prohibit Defendants' unlawful conduct, and specifically enjoin Defendants from:
 - (a) directly or indirectly using the QUIETROCK mark or any other mark, word, or name similar to QUIETROCK which is likely to cause confusion, mistake, or to deceive; and
 - (b) advertising, promoting, or otherwise using the QUIETROCK mark or its likeness or portions thereof.
3. Require Defendants to deliver to Serious Materials or its counsel for destruction all articles, including products, packaging, stationary, advertising materials and the like under Defendants' possession, custody or control that infringe the QUIETROCK mark or otherwise violate any law, including but not limited to federal or state statutes or the common law of California;
4. Award Serious Materials compensatory and statutory damages in an amount to be determined according to proof at trial;
5. Order Defendants to pay punitive damages in an amount to be determined at trial;

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- 1 6. Award Serious Materials its reasonable attorneys' fees and costs of this action; and
2 7. Award Serious Materials such other relief that the Court deems just, equitable, and
3 proper.

4 Dated: September 6, 2007

FARELLA BRAUN & MARTEL LLP

By: 
John L. Cooper

Attorneys for Plaintiff
SERIOUS MATERIALS, LLC

VERIFICATION

I, Kevin Surace, am President and Chief Executive Officer of Serious Materials, LLC a party to this action, and am authorized to make this verification on its behalf. I have read the foregoing Verified Complaint for Damages and Injunctive Relief and know its contents. I am informed and believe and on that ground allege that the matters stated in the Verified Complaint for Damages and Injunctive Relief are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 5, 2007, at Sunnyvale, California.



Kevin J. Surace

EXHIBIT “A”

Int. Cl.: 17

Prior U.S. Cls.: 1, 5, 12, 13, 35, and 50

Reg. No. 2,900,787

United States Patent and Trademark Office

Registered Nov. 2, 2004

TRADEMARK
PRINCIPAL REGISTER

QUIETROCK

QUIET SOLUTION, INC. (DELAWARE COR-
PORATION)
FRANCISCAN BUSINESS PARK
3685 ENOCHS STREET
SANTA CLARA, CA 95051

FIRST USE 3-15-2002; IN COMMERCE 1-1-2003.

SN 78-239,496, FILED 4-18-2003.

FOR: SOUNDPROOFING MATERIALS FOR
BUILDINGS, IN CLASS 17 (U.S. CLS. 1, 5, 12, 13, 35
AND 50).

SCOTT OSLICK, EXAMINING ATTORNEY

A

EXHIBIT “B”

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QuietRock **QuietRock** is a kind of internally damped drywall panel by Quiet Solution , an American manufacturer of soundproofing products.

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layers of standard drywall. That's quite a bit of noise dampening ...

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QuietRock soundproofing drywall - does it work?

QuietRock soundproofing drywall - does it work? ... using the **Quietrock** for sound proofing my ceiling in my duplex to lower the noise ...

studioforums.com/eve/ubb.x/a/tpc/f/3756015614/m/1591073...

<http://www.quietsolution.com/>

www.quietsolution.com/

QuietRock Application Note (PDF File)

1 Application Note June 2003 The QuietWood line of engineered products is a sound isolation system designed to replace standard plywood in any wall
www.quietsolution.com/QuietWood_Application_Note.pdf
More Results from www.quietsolution.com

QuietRock - Wikipedia,
the free encyclopedia
QuietRock is a kind of internally damped drywall panel by Quiet Solution, an American manufacturer of soundproofing products. It is designed to ...
en.wikipedia.org/wiki/QuietRock

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store.yahoo.com/quietsolution/construction.html

YouTube - Sound of Silence: Soundproofing with QuietRock

This HGTV video on **Quietrock** soundproof drywall. More info at <http://soundproofingwithdave.com...>

www.youtube.com/watch?v=EFtoFR0CGsE

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QuietRock local distributors?

quietrock.wellit.it/

Soundproofing with Dave: "i want that" featuring

QuietRock ...

"i want that" featuring **QuietRock** soundproof drywall ... HGTV: **QuietRock** featured on I Want That!

soundproofingwithdave.com/2007/08/want-that-featuring-q...

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magnesiacore.com/solutions.html

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EXHIBIT "B"

**SUMMONS
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

SUPRESS PRODUCTS, LLC, a Nevada limited liability company; and DOES 1 through 10,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENDORSED

2007 SEP -6 P 3:08

D. Wendel

50

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

SERIOUS MATERIALS, LLC, a Delaware limited liability company

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no presenta puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court, County of Santa Clara
191 North First Street

San Jose, CA 95113

(Civil Unlimited)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

John L. Cooper (CA SBN 050324)

(415) 954-4400 (415) 954-4480

June T. Tai (CA SBN 226997)

Farella Braun + Martel

235 Montgomery Street, 17th Floor, San Francisco, CA 94104

DATE: SEP - 6 2007

Kiri Torre

Clerk, by

(Fecha)

Chief Executive Officer/Clerk

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): SUPRESS PRODUCTS, LLC, A NEVADA LIMITED LIABILITY COMPANY

- under:
- | | |
|------------------------------------------------------------------|---------------------------------------------------------|
| <input type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |

- ☒ other (specify): LIMITED LIABILITY COMPANY
- ☐ by personal delivery on (date):

Page 1 of 1